

FILED

DEC 8 2016

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 BRIAN J. STRETCH (CABN 163973)  
United States Attorney  
2  
3 BARBARA J. VALLIERE (DCBN 439353)  
Chief, Criminal Division  
4 JEROME MAYER-CANTÚ (CABN 291623)  
Assistant United States Attorney  
5

6 450 Golden Gate Avenue, Box 36055  
7 San Francisco, California 94102-3495  
Telephone: (415) 436-7301  
Fascimile: (415) 436-7234  
jerome.mayer-cantu@usdoj.gov

8 Attorneys for the United States of America  
9

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA, ) NO. 3:16-CR-00200 (WHO)  
14 Plaintiff, )  
15 v. ) **JOINT STIPULATIONS AND  
16 DARRELL LUCKETT, JR., ) WAIVERS FOR BENCH TRIAL**  
17 Defendant. ) *Dec. 8, 2016*  
18 ) Date: November 10, 2016  
19 ) Time: 1:30 p.m.  
20 ) Court: The Hon. William H. Orrick  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

1       The parties respectfully submit the following stipulations and waivers in anticipation of a bench  
 2 trial before this Court on November 10, 2016.

3       **I. WAIVER OF RIGHTS**

4       1. Pursuant to Federal Rule of Criminal Procedure 23, Luckett waives his right to a jury trial  
 5 and the government consents to have the Court conduct the trial in this case.

6       2. Luckett waives his right to testify, to cross-examine witnesses called by the government,  
 7 and to call witnesses on his own behalf.

8       3. The parties agree that the Court can rely on the declarations submitted at the motions  
 9 hearing on September 1, 2016, and the stipulations below to decide whether Luckett is guilty or not  
 10 guilty of the charges, and they submit the matter for decision by the Court on that basis.

11      **II. FACTUAL STIPULATIONS<sup>1</sup>**

12       1. If called to testify at trial, Officer Cunnie of the San Francisco Police Department would  
 13 testify as follows:

14       a. Officer Cunnie first encountered Luckett in the summer of 2015. Officer Cunnie had  
 15 reviewed Luckett's criminal history at some point in the summer of 2015, and Officer  
 16 Cunnie knew that Luckett was serving a term of probation with a search condition.

17       b. On March 20, 2016, Officer Cunnie was patrolling the Tenderloin area of San Francisco,  
 18 California, near the intersection of Turk Street and Leavenworth Street. Officer Cunnie  
 19 and his partner, Officer Steve Orengo, were in full police uniform, and they were driving  
 20 a marked police car.

21       c. The officers were driving west on Turk Street, moving at approximately 10 miles per  
 22 hour, when Officer Cunnie saw Luckett walking east towards them. When Luckett saw  
 23 the police car, he stopped, turned around, and started walking away. The officers then saw  
 24 Luckett enter a liquor store.

25  
 26       <sup>1</sup> The parties agree to a bench trial and stipulate to the facts described below. The parties enter  
 27 into these stipulations with the understanding that Luckett is not rendering moot his right to appeal the  
 28 denial of his motion to suppress, and not waiving his objection to the introduction of the evidence that  
 he argued should be suppressed. *United States v. Larson*, 302 F.3d 1016, 1020 (9th Cir. 2002) (stating  
 that appeal after a bench trial by stipulated facts not moot if the stipulations merely describe evidence  
 the government intended to introduce at trial).

- d. The officers circled around the block, and when they returned they saw Luckett heading east on Turk Street again. Luckett again started to pick up speed and twisted his body away from the officers.
- e. Officer Cunnie asked Luckett to stop so they could talk, but Luckett continued walking. Officer Cunnie then told Luckett that he was being detained, but Luckett ignored him again.
- f. The officers then caught up to Luckett, stopped him, and tried to pat him down. Luckett resisted, so the officers forced him to the ground and patted down the exterior of his clothing.
- g. Officer Cunnie felt a hard, barrel-shaped object under Luckett's sweatshirt. Cunnie lifted up the sweatshirt and saw that Luckett was carrying a handbag by his right hip. Inside the handbag, Officer Cunnie found a Colt .45 pistol, Model 1911, bearing serial number 2303752. The gun was loaded with various rounds of ammunition. The gun also bore the engraving: "United States property." Luckett was arrested.
- h. In a post-arrest interview, Luckett waived his *Miranda* rights and told Officer Cunnie that he was carrying the firearm.

2. The parties stipulate that Luckett sustained a felony conviction in 2013 for a violation of  
459 of the California Penal Code, which was punishable by more than one year of  
imprisonment.

3. The parties stipulate that that the Colt .45 pistol, Model 1911, bearing serial number 2, was manufactured outside the State of California, and therefore traveled in interstate commerce before being found in San Francisco, California on March 20, 2016.

23 //

24 //

25 //

26 //

27 //

1       4. The parties stipulate that the firearm and the recording of Luckett's post-arrest interview  
2 described above are deemed admitted into evidence for the purpose of this bench trial, subject to  
3 Luckett's objection noted above.

4  
5  
6 IT IS SO STIPULATED.

7  
8  
9 Dated: November 10, 2016  
10  
11       Dec. 8, 2016  
12 Dated: November 10, 2016  
13  
14       Dec. 8, 2016  
15 Dated: November 10, 2016  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BRIAN J. STRETCH  
United States Attorney

  
JEROME MAYER-CANTÚ  
Assistant United States Attorney

  
DARRELL LUCKETT, JR.  
Defendant

  
GEOFFREY HANSEN  
Attorney for Defendant